

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

RICHARD WESLEY BRYAN,  
Petitioner,

v.

PATRICK GLEBE,  
Respondent.

CASE NO. 3:16-CV-05092-RBL-JRC  
ORDER TO SHOW CAUSE

This case has been referred to United States Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4.

On February 8, 2016, petitioner Richard Wesley Bryan filed a 28 U.S.C. § 2254 petition, in which he seeks to challenge his conviction for refusing to submit a urinalysis or urine sample. Dkt. 4 at 1. Because it appears that the petition may be a second or successive petition, which must be transferred to the Ninth Circuit, petitioner is ordered to show cause on or before March 11, 2016 why his petition should not be transferred.

In his current petition, petitioner states that he seeks to challenge the decision of the Washington Court of Appeals (COA No. 46055-6-II) and Washington Supreme Court (No.

1 91161-4). Dkt. 4 at 1. However, petitioner does not specifically state what conviction he is  
2 challenging nor does he give the date of his conviction. Petitioner attaches both state court  
3 decisions to his petition. The Washington Court of Appeals dismissed petitioner's personal  
4 restraint petition challenging a Department of Corrections' determination that petitioner had  
5 failed to submit a sample for urinalysis testing as successive. Dkt. 4 at 17. The Washington  
6 Supreme Court denied review of petitioner's personal restraint petition. Dkt. 4 at 20.

7       Petitioner has previously sought habeas relief in this Court as to his 2012 disciplinary  
8 hearing in which petitioner failed to provide a urine sample. *Bryan v. Glebe*, Case No. 13-5828-  
9 BHS/KLS. Case No. 13-5828 was denied and a certificate of appealability was denied. Dkts. 14,  
10 16. Petitioner also attaches a copy of the Order Adopting Report and Recommendation in Case  
11 No. 13-5828 to his petition. Dkt. 4 at 26.

12       Petitioner has also sought habeas relief in his Court related to his 2006 conviction of first  
13 degree child molestation, first degree burglary, and first degree rape. *Bryan v. Glebe*, Case No.  
14 14-5147-BHS/KLS. Case No. 14-5147 is currently pending. *See* Dkt. 26.

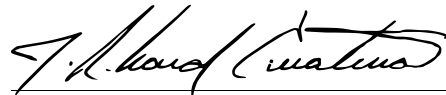
15       Petitioner acknowledges that a prior habeas case was dismissed because he failed to  
16 exhaust his state court remedies, but claims that he now retains a powerful and legitimate interest  
17 in obtaining habeas review because he is in fact innocent. Dkt. 4 at 13. It is unclear whether  
18 petitioner refers to Case No. 13-5828-BHS/KLS, Case No. 14-5147-BHS/KLS or another case.

19       Because petitioner does not include the conviction he is challenging in his petition, nor  
20 does he give the date of his conviction, it is unclear if petitioner's current petition is a second or  
21 successive petition. If a petition is second or successive, then petitioner must seek authorization  
22 from the Court of Appeals before filing the new petition with the district court. 28 U.S.C. § 2244  
23 (b) (3) (A). Ninth Circuit Rule 22-3 (a) provides guidance:  
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1 Any petitioner seeking leave to file a second or successive 2254 petition or 2255  
2 motion in district court must seek leave under 28 U.S.C. §§ 2244 or 2255. An  
3 original and five copies of the application must be filed with the Clerk of the  
4 Court of Appeals. No filing fee is required. If a second or successive petition or  
5 motion, or application for leave to file such a petition or motion, is mistakenly  
6 submitted to the district court, the district court shall refer it to the court of  
7 appeals.

8 Accordingly, petitioner is ordered to show cause why his petition is not successive and  
9 should not be transferred on or before March 11, 2016. Failure to show cause shall be deemed a  
10 failure to properly prosecute this matter and the Court will recommend dismissal of this matter.

11 Dated this 16<sup>th</sup> day of February, 2016.

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J. Richard Creatura  
United States Magistrate Judge